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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/884,362	06/18/2001	Drew Heimer	1161-37	1799

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EXAMINER

MAPLES, JOHN S

ART UNIT	PAPER NUMBER
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1745

DATE MAILED: 06/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n N .

09/884,362

Applicant(s)

HEIMER, DREW

Examiner

John S. Maples

Art Unit

1745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____ .
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 ~~is/are~~ are pending in the application.
- 4a) Of the above claim(s) 13-20 ~~is/are~~ are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 ~~is/are~~ are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10/10/01 ~~is/are~~ are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____ .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ .
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____ .
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

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1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-12, drawn to a stackable member, classified in class 429, subclass 99.
 - II. Claims 13-20, drawn to a stackable module, classified in class 429, subclass 186.
2. The inventions are distinct, each from the other because: Group II requires a lip upstanding from and formed with the horizontal portion of the support base, which feature is not part of the Group I stackable member. In addition, the Group I member includes a molded plastic module, which element does not form part of the Group II module.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and recognized divergent subject matter, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Sal Abbruzese on May 22, 2003 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-12. Affirmation of this election must be made by applicant in replying to this Office action. Claims 13-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.
5. The drawings are objected to because Figures 4-6 do not include the figures outlined in the specification for these drawings.
6. The specification is objected to because Figures 4-6 disclose 3 separate portions of the base and these portions have not been described in the specification.

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7. Claim 8 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

It is unclear how the limitations of claim 8 would be realized with the rib on the lower surface of the base when the adjacent modules are flush next to one another as Figure 3 of the present applicant depicts? Clarification is required.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-3, 6, 7, 9 and 11 are rejected under 35 USC 102(b) as being anticipated by Stone-US Patent No. 5,403,679. ('679)

Reference is made to Figures 2 and 3 of '679 along with column 5, line 3 through column 6, line 4. Openings 64 as seen in these figures comprise the air flow openings as claimed while members 70 and 66 comprise the claimed snap and receptacle, respectively, of claim 7. The stiffening ribs are the end walls at the front of the module in '679 along with the other walls found within the module as seen in Figures 2 and 3.

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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11. Claims 1, 3-5, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over '679 in view of both Lavanture and Stocchiero.

The '679 patent teaches all of the claimed subject matter except for the ribs on both the upper and lower surface of the planar surface and for the grid on the sides of the module. Lavanture teaches ribs found on the upper side and on the lower side of a battery holder. To include in the planar surface of '679 the ribs as taught in Lavanture would have been obvious to one of ordinary skill in the art to increase the strength of the said surface so that the battery would be securely supported from both the upper and lower side thereof.

Stocchiero discloses a grid on the side of a battery container. To incorporate in the module of '679 the grid as shown in Stocchiero would have been obvious so that the sides of the module would be strengthened so that that they will not collapse if damaged from the outside.

12. Claims 1, 3, 6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,981,101 ('101).

The '101 patent teaches all of the claimed subject matter in Figures 4 and 7 and in column 6, lines 15-27 and in column 7, line 38-column 8, line 21 of each of the above claims except for the modules being formed of plastic. It is noted that column 6, lines 5-14 disclose the modules in '101 being formed of "whatever material is desired". It would thus have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the modules in '101 of plastic for the well known properties thereof in being strong and durable yet being lightweight.

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13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

McBrien describes battery modules held by a horizontal bar passing therethrough.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John S. Maples whose telephone number is 703-308-1795. The examiner can normally be reached on Monday through Thursday from 6:15-3:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 703-308-2383. The fax phone numbers for the organization where this application or preceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



John S. Maples
Primary Examiner
Art Unit 1745

JSM

6-9-2003